

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA :  
 :  
 : Crim. No. 3:17-cr-71 (AWT)  
v. :  
 :  
RAHEEN THOMPSON :  
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**RULING ON MOTION TO SUPPRESS**

The defendant, Raheen Thompson ("Thompson"), is charged in a four-count indictment with possession with intent to distribute Pentylone Hydrochloride ("MDMA") in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); possession of marijuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(D); unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). Thompson moved to suppress all physical and testimonial evidence obtained by the Hartford Police Department on or about August 7, 2016, and in connection with his motion to suppress, he also filed a motion seeking an order compelling the government to disclose the identity of a confidential informant. For the reasons set forth below, the court denied both his motion to

compel the government to disclose the identity of the confidential informant and his motion to suppress.

## **I. FACTS**

The court makes the following findings of fact, which it concludes have been proven by a preponderance of the evidence. See United States v. Matlock, 415 U.S. 164, 177 n.14 (1974) ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence."). Two witnesses testified at the suppression hearing: Jamar Ryals ("Ryals"), who was called by the defense, and FBI Special Agent Andrew Nelson ("Officer Nelson"), who at the time of the events in question was a Hartford Police Department officer.

On August 7, 2016, a registered confidential informant (the "CI") who had been proven reliable in that the CI had previously provided information about criminal activity that led to arrests and convictions of persons engaged in such activity as well as the seizure of illegal drugs and weapons, contacted Detective Greg Corvino, who was a member of the Hartford Police Shooting Task Force. The CI informed Detective Corvino that a male, who was seated in a grey Nissan Maxima having a partial Connecticut registration of "AC 428," was in possession of a firearm. The CI also informed Detective Corvino that the vehicle was parked in the parking lot of the Vibz Uptown Club, located at 3155 Main

Street, Hartford. Detective Corvino contacted Officer Nelson and conveyed the information that he had received from the CI.

Based on the tip passed on by Detective Corvino, Officer Nelson, Officer James Newell, and Officer Jeffrey Pethigal, who were assigned to the "Hot Spot Detail," together with Sergeant Corey Clark, went to the Vibz Uptown Club in marked police vehicles to investigate.

As the officers drove into the parking lot, Officer Nelson observed a Nissan Maxima matching the description given to Detective Corvino parked in the parking lot in front of the club, where the CI had indicated the vehicle would be parked. The vehicle was backed into the parking space. Officer Nelson observed Ryals leaning into the passenger-side window of the Nissan Maxima. Officer Nelson stopped his vehicle to the left of the passenger side of the Nissan Maxima. Officer Nelson observed that all of the windows were in the down position and the vehicle was occupied by three men, who turned out to be Philip Jackson, who was in the driver's seat, Thompson, who was in the front passenger seat, and Rasheem Jenkins, who was in the back seat on the passenger side. Officer Nelson exited his vehicle and walked to the driver's door, and as he did so, he saw that the front license plate of the Nissan Maxima was AC 42871. As Officer Nelson approached the vehicle, he recognized the individual in the driver's seat to be Jackson; Officers Nelson

and Pethigal had arrested him a week prior in the same vehicle with a firearm. Jackson and Thompson looked at Nelson and made movements as if they were concealing items on the floor of the vehicle.

At that point, Officer Nelson directed them to show him their hands. Jackson continued to move as if he were hiding something, and Nelson approached the driver's side of the vehicle and ordered Jackson to raise his hands. Officer Nelson smelled a strong odor of marijuana coming from the vehicle and saw several knotted plastic bags of marijuana in plain view in the cup holder in the center console. Officer Nelson told Jackson to get out of the vehicle. Jackson opened the door and stepped out. Jackson stated that all he had was "weed," and Officer Nelson performed a pat-down for officer safety, left Jackson with Officer Newell, and proceeded to the passenger side of the vehicle.

Sergeant Clark had approached the passenger side of the vehicle and had removed Thompson from the vehicle. Officer Nelson proceeded to help Sergeant Clark with Thompson. As Sergeant Clark was about to perform a pat-down on Thompson, Clark asked Thompson if he had any weapons on him. Thompson looked down, indicating his waistband area. Officer Nelson assisted Sergeant Clark in patting down the defendant and felt a hard object in his wasitband that he recognized to be consistent

with a firearm. When Sergeant Clark asked the defendant if he had a firearm in his waistband area, Thompson indicated that he did. Officer Nelson removed the firearm from the defendant's waistband and rendered it safe. The firearm was a Bryco Arms .380-caliber black pistol and was in a holster. While Officer Nelson was rendering the firearm safe, Sergeant Clark put handcuffs on Thompson.

Officer Nelson also felt a large bag, with smaller items in it, in the defendant's left cargo pants pocket and smelled marijuana. Thompson stated that it was just "weed." Based on the quantity of marijuana and the manner in which it was packaged, Officer Nelson concluded that Thompson was not possessing the marijuana just for his own consumption. He then advised the defendant that he was under arrest for possession with intent to sell a controlled substance.

The parking lot was brightly lit, and Nelson was able to see clearly. He did not need a flashlight. Ryals testified that he first became aware of the police presence when Officer Nelson put a gun in Ryals's face, and that he never heard the police announce their presence. But he also responded, "[q]uite possibly" when asked if Nelson was the officer he saw first. Tr. of Suppression Hr'g 25:25, ECF No. 84. Nelson testified that he saw Ryals outside the passenger door of the Nissan Maxima. Nelson testified that Ryals was talking a lot, making a lot of

noise, and was clearly intoxicated. Nelson told Ryals to get away from the car, and officers on the passenger side of the vehicle then dealt with Ryals. Nelson testified that he never drew his service weapon at any time during the incident. The court found Ryals's testimony to be unreliable.

The defendant was then searched incidental to the arrest. As a result of that search, the officers found on the defendant's person a Beats headphone case which contained fourteen vials, each of which contained a white rock-like substance, and a Ziploc bag containing nine loose white rock-like substances. Officer Nelson recognized the white rock-like substances to be MDMA. The officers also seized \$506 in U.S. currency from the defendant.

Jackson and Jenkins were also detained in handcuffs. The clear plastic bag in the center console contained five clear plastic bags, each of which contained marijuana, and Jackson was placed under arrest for possession of a controlled substance and possession with intent to sell a controlled substance. When searching Jackson incidental to the arrest, the officers recovered a Ziploc bag containing marijuana and \$169 in U.S. currency.

Jenkins was released, and Thompson and Jackson were transported to the police department and booked.

## **II. DISCUSSION**

The defendant moved to suppress all physical and testimonial evidence, and in connection with his motion to suppress, he sought an order compelling the government to disclose the identity of the CI. The court concluded that the defendant had not demonstrated that the government should be required to disclose the identity of the CI and also concluded that the motion to suppress should be denied.

**A. Disclosure of the Confidential Informant's Identity**

The government has a "privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." Roviaro v. United States, 353 U.S. 53, 59 (1957). The rationale underlying the privilege was expressed in Roviaro as follows:

The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Id. (footnote omitted). "The scope of the privilege is limited by its underlying purpose." Id. at 60.

Thus, where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged. Likewise, once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable.

Id. Moreover, "[w]here the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Id. at 60-61.

The Supreme Court "believe[s] that no fixed rule with respect to disclosure is justifiable." Id. at 62. "The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense." Id. In striking the proper balance, a court must consider "the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." Id.

"The defendant bears the burden of showing the need for disclosure of an informant's identity, and to do so must establish that, absent such disclosure, he will be deprived of his right to a fair trial." United States v. Fields, 113 F.3d 313, 324 (2d Cir. 1997) (citation omitted). For instance, "[d]isclosure has been required at trial where the informant is a key witness or participant in the crime charged, someone whose testimony would be significant in determining guilt or innocence." United States v. Russotti, 746 F.2d 945, 950 (2d Cir. 1984). On the other hand, the request for disclosure has

been denied when the informant was a "mere tipster," the defendant provided no basis for concluding that the defendant would play any role in the trial on the merits, and there was nothing to suggest that the informant would corroborate a defense. See United States v. Jacobs, 650 F. Supp. 2d 160, 170 (D. Conn. 2009) (denying disclosure where defendant claimed disclosure was necessary because the informant was "an integral component" of the police investigation and his/her "credibility and reliability" was unknown, after the court considered "whether the confidential informant was an eyewitness or mere tipster, the relationship between the issue and the probable testimony of the confidential informant, and the government's interest in nondisclosure" (quoting United States v. Holguin, 936 F. Supp. 157, 161 (D. Conn. 1996))); see also United States v. Muhammad, No. 12-cr-206 (AVC), 2013 WL 62441319, at \*2 (D. Conn. Dec. 3, 2013) (denying disclosure where defendant failed to make a "particularized showing" that the "individuals participated in and were material witnesses to the events charged in th[e] indictment").

Here, the defendant contends that "the requested information is essential to both [his] suppression motion, insofar as his seizure was based entirely on the CI's information, as well as his potential trial defense, insofar as

he was entrapped into committing the crime." Memo. in Support of Def.'s Mot. to Compel Disc. 2, ECF No. 32-1.

The defendant is charged with possession with intent to distribute MDMA, possession with intent to distribute marijuana, and two firearm offenses. The officers went to the club that evening based on a tip provided by a known, reliable confidential informant. The information received from the informant is relevant only for the purpose of establishing the reason the officers approached the vehicle. Once the officers approached the vehicle, they smelled marijuana and then saw marijuana in plain view in the cup holder of the center console. The government represents that the CI is not an eyewitness with direct personal knowledge of what occurred while the officers were on the scene and approaching the vehicle. Thus, any testimony from the CI is of marginal significance at best.

With respect to an entrapment defense, the defendant argues that the firearm belonged to Jackson, who had previously been arrested with a firearm by Officer Nelson and Officer Pethigal, and that Jackson entrapped the defendant and must be the confidential informant. However, Jackson is known to the defense, and the government represents that none of the occupants of the vehicle provided information to officers about what occurred in the vehicle prior to the investigatory stop and removal of its occupants. Moreover, as the government notes in

its opposition, in order to establish an entrapment defense, the defendant must show government inducement of criminal activity, as well as the defendant's lack of predisposition to engage in the criminal conduct, and nothing in the defendant's motion claims government entrapment.

Finally, considering the nature of the information provided by the CI, the charges against the defendant, and the fact that the two individuals in the vehicle who were arrested have had criminal involvement with firearms, the CI has reason to be concerned about retaliation. In fact, the government represents that the CI does not want to come forward for fear of reprisal, and so will not be called as a witness. Thus, disclosure of the CI's identity in this case could discourage citizens from performing their obligation to communicate their knowledge about criminal activity to law enforcement officials.

For these reasons, the court concluded that the government is entitled to withhold the identity of the CI.

**B. The Investigatory Stop**

"An investigatory stop is permissible under the Fourth Amendment if supported by reasonable suspicion." Ornelas v. United States, 517 U.S. 690, 693 (1996). Although the concept of reasonable suspicion is a "fluid" one that is "not readily, or even usefully, reduced to a neat set of legal rules," id. at 696 (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)), the

Supreme Court has described it as "'a particularized and objective basis' for suspecting the person stopped of criminal activity," id. at 695-96. Reasonable suspicion "is dependent upon both the content of information possessed by police and its degree of reliability." Navarette v. California, 572 U.S. 393, 397 (2014) (quoting Alabama v. White, 496 U.S. 325, 330 (1990)). "The standard takes into account 'the totality of the circumstances--the whole picture.'" Id. (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). Although a "hunch" does not create reasonable suspicion, see Terry v. Ohio, 392 U.S. 1, 27 (1968), the level of suspicion required is "'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." Navarette, 572 U.S. at 397 (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)).

"Reasonable suspicion may be based upon information from a confidential informant so long as the tip bears sufficient 'indicia of reliability.'" United States v. Elmore, 482 F.3d 172, 179 (2d Cir. 2007) (quoting Adams v. Williams, 407 U.S. 143, 147 (1972)). Information from a confidential informant is considered more reliable when the informant is known by police and when the informant has provided reliable information in the past. See id. at 180 ("Where informants are known, however, a lesser degree of corroboration is required."); id. ("[A] proven

track record of providing reliable tips may serve to bolster an informant's veracity."). The reliability of information is also enhanced when law enforcement officials are able to corroborate details provided by the informant. See id. at 179.

Here, the CI was known to Detective Corvino and had provided reliable information in the past. See Adams, 407 U.S. at 146-47 (The Court found that the officer was justified in acting on an informant's tip because "[t]he informant was known to [the officer] . . . [;] [and] had provided him with information in the past"; the Court also noted that the defendant might have been subject to arrest under Connecticut law for making a false complaint had the information from the tip proven incorrect.). Moreover, the officers here had additional reason to credit the information from the CI because of the details that were corroborated. The officers were able to identify the car based on the information from the CI concerning the fact that it was a Nissan Maxima, that the license plate contained "AC 428," and that the car was located where the CI said it would be.<sup>1</sup> Thus, the officers had a specific, articulable suspicion of criminal activity and were justified in approaching the parked vehicle.

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<sup>1</sup> The CI and the police report described Jackson's vehicle as being gray, but Ryals testified that it was silver. Because there was no inquiry about the shade of gray, the court does not consider this discrepancy material.

Then, as the officers approached the vehicle, Officer Nelson recognized the vehicle registration to be that of a vehicle associated with the arrest of Jackson a week prior for illegal possession of a firearm, they smelled marijuana, and Officer Nelson observed Jackson and Thompson look at Nelson and make movements as if they were concealing items on the floor of the vehicle. Nelson then saw the knotted plastic bags of marijuana in the cup holder in the center console and recognized the contents as marijuana. At this point, the officers had a basis for reasonable suspicion that went beyond the information they had received from the CI, and they were justified in proceeding further with the investigatory stop, which they did by having the occupants exit the vehicle so that they could perform pat-downs for officer safety. See United States v. Hensley, 469 U.S. 221, 235 (1985) (during Terry stops, officers are "authorized to take such steps as [are] reasonably necessary to protect their personal safety and to maintain the status quo during the course of [the] stop"); United States v. Alexander, 907 F.2d 269, 272 (2d Cir. 1990) ("A law enforcement agent, faced with the possibility of danger, has a right to take reasonable steps to protect himself and an obligation to ensure the safety of innocent bystanders, regardless of whether probable cause to arrest exists.").

After Thompson was removed from the vehicle, the pat-down led to discovery of the firearm and marijuana packaged in a manner consistent with street-level sales. At this point, Thompson was advised that he was under arrest for drug offenses.

The defendant contends that the investigatory stop was a de facto arrest for which probable cause was lacking. He argues that:

At least four officers and two marked patrol cars were involved in the stop and subsequent search. Officer Nelson's marked patrol car was deliberately positioned so as to "box in" the Nissan. Immediately upon exiting his marked patrol car, Officer Nelson drew his service weapon and pointed it and his flashlight at the vehicle's occupants. Mr. Thompson was subsequently "removed" from the vehicle and handcuffed before being searched.

Memo. in Support of Def.'s Motion to Suppress 14, ECF No. 27.

While the defendant is correct that four officers and two marked patrol cars were at the scene, the court concluded that Officer Nelson had not drawn his service weapon. The defendant relies on testimony of Ryals, but as discussed earlier, the court finds Ryals's testimony to be unreliable, and Officer Nelson testified that he did not draw his service weapon and did not see any of the other officers draw a weapon. The parking lot was brightly lit, and Nelson also testified that he did not have a flashlight in his hand. Also, Officer Nelson testified that the Nissan Maxima was backed into the space and that he stopped his patrol car just short of the passenger side of the vehicle, and then

exited his vehicle and walked to the driver's side door; the fact that Nelson was not at the driver's door makes Ryals's account implausible. In addition, given that the parking lot was so crowded that people were double-parked, there was no practical alternative to stopping the police vehicles in locations that would impede the ability of the Nissan Maxima to drive away. Finally, Officer Nelson testified that Thompson was not in handcuffs at the time he indicated that he had a firearm in his waistband, but was handcuffed by Sergeant Clark while Nelson was rendering the firearm safe. Thus, the court concludes that the investigatory stop was not a de facto arrest.

The MDMA was discovered during a search incidental to Thompson's arrest. See Birchfield v. North Dakota, 136 S. Ct. 2160, 2176 (2016) ("[T]he mere 'fact of [a] lawful arrest' justifies 'a full search of the person.'" (quoting United States v. Robinson, 414 U.S. 218, 235 (1973))). After Thompson was arrested, the officers ran a check on the firearm and determined that it was not stolen, but an inquiry about the defendant revealed that he is a convicted felon who is prohibited from possessing firearms.

Based on the foregoing, the court concluded that both the investigatory stop and the arrest of the defendant were valid, and there is no basis for suppressing the physical and

testimonial evidence obtained by the Hartford Police Department on or about August 7, 2016.

### **III. CONCLUSION**

For the reasons set forth above, Defendant Raheen Thompson's Motion to Compel (ECF No. 32) and Defendant Raheen Thompson's Motion to Suppress Evidence (ECF No. 26) were DENIED.

It is so ordered.

Dated this 9th day of September 2019, at Hartford, Connecticut.

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/s/AWT  
Alvin W. Thompson  
United States District Judge